



Department of Energy

Ohio Field Office
Miamisburg Environmental Management Project
P.O. Box 66
Miamisburg, Ohio 45343-0066

FEB 27 2002

Michael J. Grauwelman, President
Miamisburg Mound Community Improvement
Corporation
P.O. Box 232
Miamisburg, OH 45343-0232

MB-0204-02

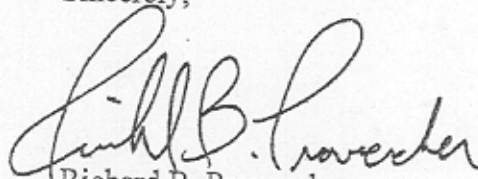
Dear Mr. Grauwelman:

The purpose of this letter is to document a new change to Exhibit A, Real Property Excluded from Transfer, of the "Sales Contract by and between the USDOE and the MMCIC" (executed on 23 January 1998). As you may recall, on 31 July 2001, I sent you a similar letter regarding Buildings I, B, M, H and Magazines 80-84 (reference Provencher/Grauwelman letter # MB-0485-01).

Based on new information which has been carefully reviewed by members of my staff, I have decided that it is in the best interest of the Government to demolish Building 98 instead of transferring it to the MMCIC. This letter serves to formally document the addition of Building 98 to Exhibit A of the sales contract. This change in building end-state was communicated to Dann Bird and Frank Bullock of your staff on 6 February 2002. I have already directed Babcock & Wilcox Technologies of Ohio, Inc. (BWXT O) to change the building's end-state in the FY02 Annual Operating Plan.

If you have any questions on Building 98, please contact Oba Vincent at 865-3278.

Sincerely,


Richard B. Provencher
Director

cc:

P. Sandy Baker, BWXT O
Mona Snyder, AAM
Derrick Franklin, AAM



Department of Energy

Ohio Field Office
Miamisburg Environmental Management Project
P.O. Box 66
Miamisburg, Ohio 45343-0066

JUL 31 2001

Michael J. Grauwelman, President
Miamisburg Mound Community
Improvement Corporation
P.O. Box 232
Miamisburg, OH 453430-0232

MB-0485-01

Dear Mr. Grauwelman:

The purpose of this letter is to document changes to-date to Exhibit A, Real Property Excluded from Transfer, of the *Sales Contract by and between the United States Department of Energy and the Miamisburg Mound Community Improvement Corporation* (executed on January 23, 1998). As discussed during the July 13 and July 27, 2001 meetings of the Mound Reuse Partnership Council, the changes to-date are:

Removed from Exhibit A (i.e., buildings will be transferred to the MMCIC):

Magazines 80 through 84

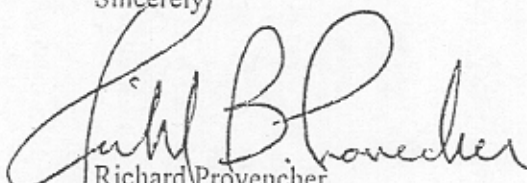
Added to Exhibit A (i.e., buildings will be decontaminated and demolished):

I, B, M, H

As you know, Building 85 will be demolished. This demolition does not constitute a change to Exhibit A. Future changes in additional building end-states may be warranted in the upcoming months, as the Re-Engineering effort proceeds. These changes will either be documented in a letter to you, similar to this letter, or in a formal revision to Exhibit A of the Sales Contract.

If you have any questions, please contact me at 865-3252.

Sincerely,


Richard Provencher
Director

cc:
Derrick Franklin, MEMP
Linda Sidwell, MEMP
Mona Snyder, AAM
P. Sandy Baker, BWXTO

SALES CONTRACT

by and between

the

UNITED STATES DEPARTMENT OF ENERGY

and the

MIAMISBURG MOUND COMMUNITY

IMPROVEMENT CORPORATION

JANUARY 23, 1998

THIS SALES CONTRACT made, entered into, and effective this 23 rd day of January, 1998, between the MIAMISBURG MOUND COMMUNITY IMPROVEMENT CORPORATION (MMCIC), an Ohio Corporation, located at P. O. Box 232, Miamisburg, OH 45343-0232, hereinafter referred to as "Buyer," and the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF ENERGY, hereinafter referred to as "Seller." Buyer and Seller are hereinafter jointly referred to as "the Parties."

WITNESSETH:

WHEREAS, Seller has owned and maintained a facility at 1 Mound Road, City of Miamisburg, Montgomery County, Ohio, since late 1946 ("Mound Facility"); and -

WHEREAS, Seller has determined that it is in the best interest of the United States of America to sell the real property comprising the facility and any improvements thereto; and

WHEREAS, Buyer is interested in minimizing the impact to the community caused by the closure of the Mound Facility. Buyer's mission is the reuse of the Mound Facility and creation of employment opportunities in the community; and

WHEREAS, pursuant to the Atomic Energy Act of 1954, Section 161(g), 42 U.S.C. §2201(g), the Department of Energy has the independent authority to sell, lease, grant, and dispose of such real and personal property as provided in that Act; and

WHEREAS, Seller has determined that the rapid cleanup and sale of the facility to Buyer will assist the community in adjusting to the changes resulting from the closure of the Mound Facility; and

WHEREAS, the Parties will execute a Memorandum of Agreement in order to establish a working relationship between the Parties in order to transition the Mound Facility; and

NOW, THEREFORE, for the following-described consideration, the parties hereto agree as follows:

I. DESCRIPTION OF PROPERTY:

A. In consideration of the payment hereinafter agreed to be paid by Buyer to Seller, and in consideration of the covenants of the respective Parties hereto, each to the other to be performed by them at the time and in the manner hereinafter provided, the Parties do hereby agree to the following transaction:

The purchase of real estate and improvements thereto located in Montgomery County, Ohio, and as described in Exhibit A, which contains a legal description of the real property and a list of the improvements excluded from this Sales Contract (except as provided in Exhibit B) attached hereto and made a part hereof (hereinafter referred to as the "Premises").

B. Accuracy of Description: The description of the Premises set forth in this Agreement, and any other information provided with regard to the Premises, is based on the best information available to the Seller and is believed to be correct, but an error or omission, including, but not limited to, the omission of any information related to the description available to the Seller or any other Federal agency, shall not constitute grounds or reason for nonperformance of this Agreement or any claim by the Buyer against the Seller. The Seller will, at no expense to it, cooperate in executing and delivering quit claim deeds necessary to convey omitted land intended to be included in

the Premises and to correct any description of the Premises.

II. PURCHASE PRICE AND OTHER CONSIDERATION:

A. Seller agrees to sell and the Buyer agrees to buy the entire Premises described in Exhibit A for TEN DOLLARS (\$10.00) and other good and valuable consideration, (hereinafter the "purchase price").

B. The Office of Nuclear Energy, Science and Technology (NE) is currently evaluating whether to continue its mission (production of radioisotope power systems) at the Mound Facility. Depending on the outcome of this evaluation or subsequent future determinations, including appropriate NEPA documentation, and what actions will be required to remediate buildings and other property, the Seller may or may not add additional buildings to Exhibit A. The Seller's decision, which will be memorialized in an addendum to the Sales Contract, will not be a basis for Buyer to revise the terms of the Sales Contract (See Exhibit B for buildings which may be added). Until such time as all of the buildings listed in Exhibit B are conveyed under this contract, Buyer acknowledges that the Seller may continue the NE mission at the Mound Facility.

III. CONVEYANCE:

Seller agrees to convey the entire Premises by discrete parcels, subject to the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA) §120(h) which may require coordination with the United States Environmental Protection Agency (USEPA) on each transfer of each discrete parcel. Each discrete parcel shall be conveyed to Buyer via a series of quit claim deed (or deed without warranty) transfers as Seller relinquishes each discrete parcel; when appropriate regulatory agency approval for

deed transfer is received; and after completion of any necessary National Environmental Policy Act (NEPA) review. Upon the Seller's notice to Buyer of readiness to convey any such parcel(s), the Buyer shall accept the tender in a timely manner, not to exceed thirty (30) calendar days from receipt of the notice. Notwithstanding the foregoing, the Parties may mutually agree to defer any conveyance(s) for a reasonable period of time in order to accommodate the Buyer's need to reasonably create economically useful parcel(s). The Buyer shall provide its reasons for deferral, in writing, to the Director, Miamisburg Environmental Management Project, within fifteen (15) calendar days of its receipt of Seller's notice of readiness to convey. Such deferral shall not extend beyond the date when the requirements of CERCLA §120(h) have been satisfied as to the entire Premises nor shall any deferral have any cost impact upon the Seller. If the Parties are unable to agree to the deferral of a conveyance, the matter shall be resolved under Section XXIV as set forth herein.

IV. TITLE EVIDENCE:

Buyer reserves the right to procure a title report and/or obtain a title insurance commitment issued by an Ohio licensed title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, a standard owner's policy of title insurance in the amount of the purchase price (with fee owner's title policy premium to be paid by Buyer), insuring Buyer's good and marketable title to the Premises, subject only to those standard exceptions appearing in the owner's title policy, which from Buyer's reasonable standpoint does not unduly affect title, and those items which shall be discharged by Seller at or before the Closing Date.

V. INGRESS AND EGRESS:

Seller warrants that there is ingress and egress to the Premises. Buyer agrees that Seller will be granted at no cost temporary easements as are deemed necessary by Seller after conveyance of any particular parcel(s). Seller agrees to utilize best efforts to avoid interfering with ordinary and reasonable use of conveyed parcels. The USEPA and the Ohio Environmental Protection Agency (OEPA) and/or their Authorized Representatives shall have the authority to enter the Premises at all reasonable times for purposes consistent with the Federal Facilities Agreement (FFA).

VI. DOCUMENTARY STAMPS AND COST OF RECORDING:

The Buyer shall pay all taxes and fees imposed on these transaction(s) and shall obtain at Buyer's own expense and affix to all instruments of conveyance and security documents such revenue and documentary stamps as may be required by the Federal, State, and local law. All instruments of conveyance and security documents shall be recorded in the manner prescribed by State and local recording statutes at the Buyer's expense.

VII. CLOSING PROCEDURE:

Buyer and Seller will conduct closings at the transfer of each discrete parcel to assure that conditions for transfer have been met. The consideration payable by Buyer shall be made at the closing for the first discrete parcel.

VIII. PRORATIONS:

Taxes, assessments, insurance, and other expenses and revenue of the Premises, if any,

shall be prorated through the day prior to closing for each parcel. The costs for all utility and other support service contracts as they pertain to each parcel will be the responsibility of the Buyer after the date and time of closing for each parcel. In the event such services are provided under Seller's utility or support service contracts, Buyer shall be billed the costs associated with each of its parcels and shall make payment within thirty (30) calendar days of receipt of an invoice. This does not imply an obligation on Buyer's part to retain such contracts after transfer of any discrete parcel.

IX. DOCUMENTS FOR CLOSING:

Prior to the closing upon any discrete parcel, Seller shall furnish or cause to be furnished, for Buyer's review, copies of the Quit Claim Deed or Deed Without Warranty, a copy of this Sales Contract, associated exhibits, and closing statements.

X. PLACE OF CLOSING:

Closing shall be held at the offices of Seller, in the City of Miamisburg, Ohio or such other place as may be agreed upon.

XI. RESTRICTIONS, EASEMENTS AND LIMITATIONS:

Buyer shall take title subject to zoning regulations and restrictions appearing on the plat or otherwise common to the subdivision; public utility easements of record; taxes from the date of closing and subsequent years; and any other matters in the title report.

XII. SUCCESSORS AND ASSIGNS:

The covenants, provisions and agreements herein contained shall in every case be binding on and inure to the benefit of the Parties hereto respectively, and their respective successors. The rights and responsibilities under this Sales Contract may not be assigned

by Buyer without the written consent of the Seller.

XIII. BROKER:

Seller and Buyer warrant and represent to each other, respectively, that they have engaged no real estate broker with respect to purchase of the Premises.

XIV. CONDITION OF PREMISES:

It is understood and agreed that the Premises will be cleaned by the Seller to an "industrial use" standard as set forth in Section XVI of this Sales Contract. Except for the effects of Seller's plans for remediation activities, deferral of the transfer of any property to Buyer hereunder, and reasonable wear and tear, all buildings, utilities, and other property conveyed will be transferred in "as is" and "where is" condition as at the signing hereof, without any warranty or guarantee, expressed or implied, of any kind or nature, except as otherwise expressly stated in this Sales Contract. Notwithstanding the foregoing, the Seller shall not be obligated to repair, replace or rebuild any structures required to be totally or partially removed as a result of remediation activities. Except as provided for in Section XXII, the Seller shall not be responsible for any liability to the Buyer or third persons arising from such condition of the Premises. The failure of the Buyer to inspect fully the Premises, or to be fully informed as to the condition thereof, will not constitute grounds for any noncompliance with the terms of this Sales Contract.

XV. RISK OF LOSS:

If the Premises or any portion thereof are damaged by fire or other casualty prior to closing, Seller shall have no obligation to repair or rebuild the Premises. In the event

such casualty occurs, Buyer shall complete the purchase on the terms presented herein, and accepts the Premises in its then "as is" condition. In the event of total loss of a facility or building prior to closing, Seller will be responsible for debris removal and grading.

XVI. WARRANTIES AND REPRESENTATIONS:

- A. (1) Seller represents and warrants under its enabling legislation, the Atomic Energy Act, that (i) it has the full capacity, power and authority to enter into and perform this Sales Contract and the transactions contemplated herein, and (ii) the execution, delivery and performance by Seller of this Sales Contract has been duly authorized and approved by all necessary governmental action on the part of the Seller (except for as noted herein).
- (2) Buyer represents and warrants that (i) it is a corporation, duly organized and in good standing under the laws of the State of Ohio, (ii) it has full capacity, power and authority to enter into and perform this Sales Contract and the transaction contemplated herein, and (iii) the execution, delivery and performance by Buyer of this Sales Contract have been duly and validly authorized and approved by all necessary action on the part of Buyer.
- B. To the best of the Seller's knowledge there are no facts known to Seller materially affecting the value and condition of the Premises which are not readily observable by Buyer or which have not been disclosed to Buyer. The Parties acknowledge that in the course of the cleanup of the Premises, additional facts regarding the value and condition of the Premises will be identified and that such facts shall be

disclosed to Buyer in a timely manner.

- C. Acceptance of Property: Prior to the conveyance of any discrete parcel, the Buyer shall acknowledge that it has reviewed the existing environmental reports provided by Seller for DOE's Mound Facility, Miamisburg, Ohio. Prior to the transfer of any discrete parcel, Buyer will be provided with an environmental summary of any hazardous constituents remaining on the property and an opportunity to inspect the parcel(s) being transferred.
- D. Notice of Hazardous Substances: Pursuant to §120(h)(1) of CERCLA, 42 U.S.C §9620(h)(1), and 40 CFR Part 373, the Government has made a complete search of its records concerning the Premises. These records indicate that hazardous substances, as defined by §101(14) of CERCLA, have been stored, disposed, or generated on the Premises during the time the Premises were owned by the Government. Exhibit C, attached hereto, more fully describes and documents the quantities of hazardous substances released or disposed of on the Premises by the Seller as of the date hereof. The Premises are listed on the National Priorities List and Seller agrees to meet all CERCLA §120(h) obligations associated with the transfer of the Premises.
- E. Remedial Action Covenant: All remedial action necessary to protect human health and the environment with respect to any such substances remaining on the Premises has been or will be taken before the date of transfer, and any additional remedial action found to be necessary by regulatory authorities with jurisdiction

over the property due to contamination or hazardous substances present or in existence on the Premises as of closing, shall be conducted by the Seller.

F. With respect to each parcel conveyed, the representations and warranties of Seller and Buyer contained in this Section XVI shall survive the closing.

G. Seller has cleaned or will clean the Premises to an "industrial use" standard consistent with the exposure assumptions provided in the "Mound 2000 Residual Risk Evaluation Methodology," dated January 6, 1997 and endorsed by the USEPA and the OEPA, and attached hereto as Exhibit D and the Mound Building Disposition Process, as approved by USEPA and OEPA.

XVII. FACILITY ENVIRONMENTAL PERMITTING:

The Premises and the operations thereon are currently the subject of multiple environmental permits issued by various Federal, State, and local agencies. Some of the permits may be assigned or may be amended to encompass the operations of the Buyer. Seller agrees that it will cooperate in all applications sought by Buyer to acquire replacement permits for Buyer's operations and usage, where appropriate. If it is mandated by the appropriate regulatory agency that Buyer apply for a particular permit or assume the assignment of a particular permit, Buyer will make every reasonable effort to do so in a timely manner. Buyer is hereby notified that Seller's EPA identification number will not be transferred. Buyer is solely responsible, at its cost, for obtaining any Governmental approvals or permits that Buyer may need in connection with the transactions contemplated by this Sales Contract. Buyer's acquisition of such approvals or permits is not a condition precedent to the closing.

XVIII. OTHER AGREEMENTS:

No prior, present, or contemporaneous agreements shall be binding upon Buyer or Seller unless specifically referenced in this Sales Contract. No modification or change in this Sales Contract shall be valid or binding upon the Parties unless in writing and executed by a representative authorized to contract for each Party.

XIX. NOTICES:

Any notices required under this Sales Contract shall be forwarded to Buyer or Seller respectively by Registered or Certified mail, return receipt requested, or by overnight delivery, at the following addresses:

Realty Officer

U.S. Department of Energy

Ohio Field Office

P. O. Box 3020

Miamisburg, OH 45343-3020

President

Miamisburg Mound Community Improvement Corporation

P. O. Box 232

Miamisburg, OH 45343-0232

XX. LIMITATION OF BUYER'S AND SELLER'S OBLIGATION:

A. The responsibilities of the Seller, as described in this Sales Contract, are subject to the availability of appropriated Environmental Management program funds for cleanup of the Miamisburg Environmental Management Project and the Anti-Deficiency Act, 31 USC §§ 1341 and 1517. In the event that the remediation of any portion of the Mound Facility is extended beyond February 1, 2008, the Buyer will, at Buyer's option, be relieved from any further performance under this Sales Contract. Buyer must exercise such option by providing written notice to Seller on or before December 1, 2007. Should Buyer choose to exercise this option, then Buyer shall: (i) remit to Seller any profits received from the sale of any parcels to the extent such profits have not been invested into the Mound Facility, and (ii) provide such information and data as are requested by Seller to determine the profits and extent of investment in the Mound Facility.

Notwithstanding the foregoing, the Seller will, commencing on October 1, 2003, and continuing until this Sales Contract is concluded, provide to the Buyer an annual written report on the current remediation schedule and such report will include the projected completion dates for remediation of all portions of the Premises.

B. The Buyer shall, to the extent permitted under applicable law, indemnify and defend the United States against, and hold the United States harmless from damages, costs, expenses, liabilities, fines, or penalties incurred by Seller and/or third parties and resulting from Buyer's activities on the Premises, or any part thereof, including releases or threatened releases of, or any other acts or omissions related to, any hazardous wastes, substances, or materials by the Buyer and any subsequent lessee of the Premises or any

subdivision thereof, their officers, agents, employees, contractors, sublessees, licensees, or the invitees of any of them.

XXI. RIGHT OF ACTION:

The provisions of this Sales Contract are not intended to benefit third persons, and breach thereof shall not be the basis for a cause of action by such third person against either Party.

XXII. SELLER'S INDEMNIFICATION:

A. Seller hereby agrees to hold harmless and indemnify the Buyer against any claim for injury to person or property that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of DOE activities at the defense nuclear facility on which the property is located, as authorized by Public Law 105-85, the National Defense Authorization Act of 1998, Section 3158, subject to the promulgation of regulations and notification of Congress as required under paragraph (a) of Section 3158. This indemnification is subject to the exceptions and conditions stated in Section 3158, including, but not limited to, the following:

- (i) The person or entity making the request for indemnification must notify the Secretary of Energy in writing within two years after such claim accrues and provide copies of pertinent papers and evidence or proof of the claim;
- (ii) The person or entity the Secretary may be required to indemnify must permit the Secretary to settle or defend the claim; and
- (iii) The indemnification shall not apply to the extent the persons or entities receiving the indemnification contribute to any such release or threatened release.

B. In the event the conditions relating to the issuance of regulations and submission of Congressional notification referenced in paragraph XXII.A. above are not met, the Seller agrees to reimburse costs that would otherwise be subject to indemnification, subject to the availability of appropriated funds appropriated by Congress for such purpose.

C. Notwithstanding the foregoing, any payment of indemnity shall be limited to the availability of funds specifically appropriated by Congress and shall not entail expenditures which exceed the appropriation available at the time of the event which gives rise to a claim for indemnity. Nothing in this provision may be considered as implying that Congress will, at a later date, appropriate funds sufficient to meet claims under this indemnity.

XXIII. OFFICIALS NOT TO BENEFIT:

No member of or delegate to the Congress, or resident commissioner, shall be admitted to share any part of this Sales Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the Sales Contract if made with a corporation for its general benefit.

XXIV. DISPUTES:

A. Except as otherwise provided in this Sales Contract, any dispute concerning a question of fact arising under Section III of this Sales Contract which is not disposed of by agreement between the Parties shall be decided by the Director, Miamisburg Environmental Management Project (MEMP), or his successor in function. The Director, MEMP, shall within twenty (20) calendar days mail or otherwise furnish a written decision to the Buyer. The decision of the Director, MEMP, shall be final and conclusive